

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**In re: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION**

)
) **MDL No. 1456**
) **Master File No. 01- 12257-PBS**
) **Subcategory Case. No. 06-11337**
)

THIS DOCUMENT RELATES TO:

) **Hon. Patti B. Saris**
)

*United States of America ex rel. Ven-A-Care of the
Florida Keys, Inc., et al. v. Dey, Inc., et al.,*
Civil Action No. 05-11084-PBS

) **Leave to file granted on**
) **July 12, 2010**
)

**DECLARATION OF NEIL MERKL IN SUPPORT OF DEY DEFENDANTS' REPLY
IN FURTHER SUPPORT OF THEIR MOTION TO EXCLUDE FROM EVIDENCE
THE REPORTS AND TESTIMONY OF THEODORE R. MARMOR, PH. D.**

NEIL MERKL declares, pursuant to 28 U.S.C. § 1746, that:

1. I am a member of the law firm of Kelley Drye & Warren LLP, counsel to Dey Pharma, L.P. (formerly known as Dey, L.P.), Dey, Inc., and Dey L.P., Inc. (collectively "Dey"). I am admitted to practice law in the State of New York and have been admitted *pro hac vice* in this action.

2. I make this Declaration in support of Dey's Reply in Further Support of Dey's Motion *in Limine* to Exclude from Evidence the Reports and Testimony of Theodore R. Marmor.

3. The basis for my knowledge is my review of the files maintained by Kelley Drye & Warren LLP as part of its representation of Dey, including the documents attached hereto, and my own personal knowledge of the facts and circumstances set forth herein.

4. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the December 18, 2008 deposition of Dr. Robert Berenson.

5. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the September 12, 2007 deposition of Kathleen Buto.

6. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the September 13, 2007 deposition of Kathleen Buto.

7. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the May 15, 2007 and July 17, 2007 depositions of Thomas Scully.

8. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the May 15, 2007 and July 17, 2007 depositions of Thomas Scully.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 30, 2010.

/s/ Neil Merkl

Neil Merkl

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by causing to be sent, on July 13, 2010, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Neil Merkl

Neil Merkl